

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 825 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

ABDUL HAMID IBRAHIM BHAIYAT

Versus

ABDUL HADI GULAM QUADIR SHAIKH

Appearance:

MR RN SHAH for Petitioner
None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 02/05/2000

ORAL JUDGEMENT

#. In the facts of the case, I am constrained to observe that real difficulty of decree holder starts when he puts the decree which he obtained from the competent court in execution. The plaintiffs-respondents No.1 to 5 filed Special Civil Suit No.96/69 against the petitioner

defendant No.1, since deceased now represented by his legal heirs and respondent No.6 to 13, and the original defendants No.2 to 9 for possession and mesne profit in the court of Civil Judge (S.D.), Surat. In the suit, the parties arrived at a compromise and on the basis of that compromise decree has been passed by the civil court. As the defendants committed breach of terms of compromise, the plaintiffs filed ex.1 being Special Darkhast No.38 of 1982 for execution thereof. As usual, the defendants filed their objection at ex.35 and raised contention that the plaintiffs have no right to file Darkhast and the Darkhast in its present form is not maintainable. It is denied that the plaintiffs are trustees of the trust. As per the case of defendants, the plaintiffs are not substituted as trustees and they have no right to file Darkhast and therefore Darkhast is not maintainable. Further objection has been raised that the plaintiffs have accepted defendant No.1 as trustee and his right to manage the affairs of the trust is also acceptable by the plaintiffs. They stated that the defendant No.1 has to look after the property of the trust. The executing court framed as many as four points for consideration at ex.38. After hearing the arguments of the parties and perusing the documentary evidence produced, it has recorded its findings in the affirmative on all the four points. From the order of the executing court, I find that none of the parties has led oral evidence. The learned counsel for the petitioners contended that it is a decree by compromise only for declaration and as such, it is not executable. It has next been contended that the plaintiffs are the trustees of the trust. The property in dispute belongs to the trust and they have no right to file this application for execution of the decree. Carrying this contention further, the learned counsel for the petitioner submits that right to manage affairs of the trust are with defendant No.1 (since deceased) and by putting this decree in execution, he cannot be divested of those rights. The property which is in possession of defendant No.1 and other defendants have been given on rent to defendant No.1 and even if some terms of decree have been breached by defendant No.1 it may not give any cause to the plaintiff to get them evicted from the premises, given for residence. Lastly, it is contended that the respondents-defendants No.3 and 7 had not signed the compromise. Compromise has only been signed by defendants No.1, 4 to 6, 8 and 9 and this decree is not executable against those defendants.

#. Nobody is present on behalf of respondents-plaintiffs and other defendants.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. The petitioner has not accepted the plaintiffs-respondents to be the trustees and this is clearly a breach of the condition of the compromise decree. This decree is subject to certain condition and on breach of those conditions certainly it becomes executable. The executing court has recorded findings of fact that the suit filed by plaintiffs-respondents was for possession and mesne profit and it has been compromised. In the decree, the defendant No.1 was allowed to continue in possession of the premises for residence as he has to look after after the trust property, but when he has not looked after the trust property for which a finding of fact has also been recorded, naturally he disentitled himself to retain this premises. The other defendants were also party to the suit as well as execution proceedings. Finding of fact has also been recorded by the executing court that defendant No.1 has restrained the plaintiffs from entering the suit property. An application has also been filed by defendants ex.74 praying therein to restrain the plaintiffs from entering into the suit property of the trust. From these facts, it is clearly borne out that the defendants have prayed for restraining the plaintiffs from entering the suit property of the trust and it is clearly in breach of the terms of the compromise. It is also a fact which has been found by the court that the defendant No.1 has not shown his eagerness to join as trustee. He has not made any application before the charity commissioner to be joined as a trustee of the trust. The document ex.3 is affidavit which is not controverted by defendants No.1 and other defendants-respondents. Therefrom, it is clearly established that the defendants have committed breach of terms of compromise. The contents of that affidavit have not been denied by defendants. On the record of the executing court, the plaintiffs also filed schedule 1B from the registrar of Public Trust and therein they have been recorded as trustees of the trust. From this document, the learned executing court has rightly held that the plaintiffs are duly appointed trustees of the trust and they are competent to file this application for execution of decree. Other defendants have been parties in the matter, but they are satisfied by the order passed by the executing court. They have not challenged this order. It is to be mentioned that defendants No.3 and 7 have also not challenged this order. Admittedly all these defendants, as per their case, are in possession of the premises. They are all liable to give vacant

possession of the same to the plaintiffs. The learned trial court has not committed any error, much less a material irregularity in exercise of its jurisdiction in passing of the impugned order. It is a case where the defendants to the suit entered into a compromise under which certain conditions which are imposed are to be fulfilled by them, but they have breached these conditions and now when the decree is put in execution, all sort of objections are being raised. The petitioners and other defendants are not bonafide persons and they cannot be protected and rightly have not been protected by the executing court. It is a trust property and it has to be protected and where the persons are making all efforts to grab this property, appropriately those are to be dealt with. It is a clear case of breach of terms of compromise decree and the executing court recorded a finding of fact in the matter against the petitioner and defendants-respondents and those findings of fact recorded are not perverse. The moment the conditions of compromise decree are breached, it becomes executable and rightly the plaintiffs have put the same in execution.

#. In the result, this civil revision application fails and the same is dismissed. Rule discharged. As nobody has put appearance for respondents, no order as to costs. Interim relief, earlier granted, stands vacated.

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(sunil)